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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No. 3088 of 2001

New Delhi, this the 5th day of September, 2002.

HON'BLE MR. M.P.SINGH, MEMBER(A)

HON'BLE MR. SHANKER RAJU, MEMBER(J)

M.M. Khanna,
S/o Late Sh. Ram Murti Khanna,
Senior Personal Assistant of
HQ DG BSF,
New Delhi-11003 Applicant

(By Advocate: Shri S.C. Luthra)

Versus

1. Union of India,
through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-1

2. The Director General,
Border Security Force,
Block-10, CGO Complex,
Lodi Road,
New Delhi-3 Respondents.

(By Advocate: Mrs. Harvinder Oberoi)

ORDER

By Shri Shanker Raju, M(J)

Applicant in this OA has assailed respondents' order dated 3.11.2000 as well as 28.9.2001 whereby his request for grant of pay and allowances for the post of Senior Personal Assistant w.e.f. 19.9.95 has been rejected without assigning reasons. Applicant claims actual benefits including pay and allowances and arrears for the period 19.9.95 to 2.11.2000.

2. Briefly stated, applicant who has been working as Sr. PA in BSF Hq had joined as Stenographer Gr.III.

on 19.11.73. To fill up the promotional post of Stenographer Grade II, a Limited Departmental Competitive Examination was held by issuance^k of a Circular dated 10.9.80 which, inter alia, included Stenography test at a speed of 120 w.p.m. for 7 minutes and stenography test at a speed of 100 w.p.m. for 10 minutes. Applicant along with one Shri M.C.Pant and Shri S.K.Choudhary appeared in the examination. Though they qualified the test at the speed of 100 w.p.m. and held seriatim position in the panel.

3. Applicant was appointed on 26.11.80 as Stenographer Grade II and completed his probation period.

4. A seniority list was issued on 22.5.82 where Shri M.C.Pant and Shri S.K.Choudhary were shown senior^{ve} to him. On this a representation was made^{by applicant} but respondents suomoto rectified their mistake and issued a revised seniority list wherein applicant was shown senior to Shri M.C.Pant and Shri S.K.Choudhary. In 1990 another seniority list was issued with the similar placement. Applicant went on deputation in NSG and could not join as Sr.P.A. on adhoc basis in January, 1994. Though there existed a clear vacancy of Sr.P.A. on retirement of Sr.P.A. Shri O.P.Dua, the seniority of the applicant was relegated in the year 1995 after a gap of about 10 years.

5. As there was only one post of Sr. PA, the respondents rearranged the seniority of Shri S.K.Choudhary by showing Shri M.C.Pant as senior. Applicant assailed the impugned order by filing OA No.1500/95 and by interim order promotions to be made have been subjected to the final order of the OA and finally the OA was disposed of by estopping the respondents from correcting the alleged

mistake in fixing the seniority and the impugned order had been set aside.

6. Shri M.C. Pant was promoted as Sr. PA in 1995 and in compliance of the directions (supra), he had been issued a show cause notice and was reverted, and the seniority list was revised after about a gap of 6-7 months. Applicant was promoted as Sr. PA notionally w.e.f. 19.9.95 and actually from 3.11.2000. He represented for pay and allowances and arrears w.e.f. 19.9.95 to 2.11.2000. The same was rejected by the impugned order, giving rise to the present OA.

7. Learned counsel for the applicant Shri S.C. Luthra contended by placing reliance on a decision of Apex Court in UOI Vs. K.V. Jankiraman (JT 1991(3) SC 527 which has been relied upon by the High Court of Delhi in CW No. 4497/96 decided on 24.12.99 in Kalyan Singh Vs. UOI & Ors. to contend that it is only because of change of seniority without putting the applicant to a reasonable notice which ultimately deprived the applicant of his right to be considered for promotion as the seniormost on 19.9.95. As the applicant has been prevented from performing his duties on the higher post without his fault and the actual arrears of pay has been denied by a non-speaking order, the action of the respondents is contrary to the ratio of the decision of the Apex Court (supra) amounts to a futile exercise. In this background he stated that the applicant is entitled to get difference in pay and allowances w.e.f. 19.9.95 to 2.11.2000 and the word 'notionally' should be deleted from his promotion order.

8. Respondents, on the other hand, taking resort to FR 17(1) contended that as the applicant has not actually

worked on the promotional post, he is not entitled to get difference of pay and allowances w.e.f. 19.9.95 to 2.11.2000. In view of the Apex Court's decision in Central Railway Vs. A.V.R. Siddhanti (1974 (3) SCR 217) it is for the respondents in the circumstances of each case to consider promotion on an actual/notional basis. The respondents have been taking a conscious decision, the same cannot be found fault with as the applicant was not performing the duties of the higher post. Mrs. Harvinder Oberoi further stated that they have not unsettled the settled position and only rectified the mistake in assigning seniority to the applicant over his senior Shri S.K. Choudhary. The said mistake cannot be perpetuated after it has been detected. However, on the direction of the Tribunal, the respondents have taken an immediate action and revised the seniority. On merit it is stated that Shri S.K. Choudhary had a chance of promotion being senior to applicant. It is contended that consequent upon revision of seniority as per the Tribunal's directions, the applicant had become senior to M.C. Pant. Shri Pant made a representation which was rejected and he was reverted to the grade of Steno Gr. II.

9. We have carefully considered the rival contentions of the parties and have perused the material on record.

10. In view of the decision of the Apex Court in K.V. Jankiraman's case (supra) it has been held that the arrears of pay for the period of notional promotion ~~preceeding the date of actual promotion~~ would be decided by taking into consideration all the facts and circumstances of the ~~case and on~~ denial of arrears of salary or part of it reasons are to be recorded. Though the impugned order does not contain any reason but in view of the reasons assigned by the respondents in their reply it

would be a futile exercise and an empty formality to remand this case back to the respondents to consider this issue and pass order. Accordingly, we proceed to adjudicate this issue in the light of the decision of the Apex Court. Though no fault has been found by the Tribunal earlier in assignment of the seniority to applicant and in relegation and downgradation of the seniority list but on the basis of decision in Pushpa Bhide Vs. UOI & Ors. reported in ATR 1989 (1) CAT 397 as the action of the respondents to rectify the mistake is after a long period, they are estopped from correcting the seniority, no consequential benefits had been assigned to the applicant by the Tribunal though the same were not prayed for by him in the OA. In our considered view, the authorities after following the due process of law in view of the decision of the Apex Court (supra) accorded promotion notionally w.e.f. 19.9.95 and actually from 3.11.2000. The contention of the applicant that he had been prevented from discharging duties of the higher post without his fault and as such he is entitled for pay and allowances and arrears and his resort to High Court would be of no consequence.

11. In so far as assignment of seniority to the applicant w.e.f. 19.9.95, the same has not been arrived at on the basis of pleadings but on the direction of the Tribunal whereby the respondents were estopped from correcting the seniority after a long lapse of time. Even if the seniority assigned is to be operated upon, he was not eligible and was not seniormost to be accorded promotion in 1995. Moreover, as the applicant has not

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discharged the duties of the higher post and had only assumed charge of the promotion post only in November, 1995, he is not entitled to be accorded the actual arrears in view of the provisions of FR 17 (1) ibid. The ratio of Jankiraman's case (Supra) would be of no avail in view of the facts and circumstances of the present case.

12. In the result, the OA is bereft of merit and the same is accordingly dismissed. No costs.

S. Rajm

(SHANKER RAJU)
MEMBER (J)

M.P. Singh

(M.P.SINGH)
MEMBER (A)

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